

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 8/23/2012

Action Requested By:
Engineering

Agenda Item Type
Resolution

Subject Matter:

Development Agreement

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a Development Agreement between the City of Huntsville and RBJ Bailey, LLC, for improvements to drainage channel at Cecil Ashburn Drive

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

Quit claim a 1.2 acre parcel to RBJ Bailey, L.L.C. in exchange for certain drainage improvements along Cecil Ashburn Drive. Agreement is at no cost to the City.

Associated Cost:

Budgeted Item: Select...

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head: 

Date: 8/23/12

revised 3/12/2012

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: **Engineering**

Council Meeting Date: **8/23/2012**

Department Contact: **Lynn Majors**

Phone # **256-427-5201**

Contract or Agreement: **Development Agreement**

Document Name: **RBJ Bailey, LLC Cecil Ashburn Drainage Improvements**

City Obligation Amount: **0**

Total Project Budget: **0**

Uncommitted Account Balance: **0**

Account Number: **N/A**

Procurement Agreements

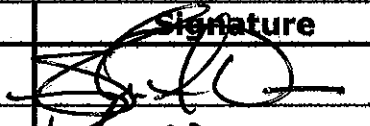
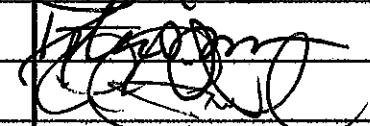

Not Applicable

Not Applicable

Grant-Funded Agreements

Not
Applicable

Grant Name:

Department	Signature	Date
1) Originating		8/23/12
2) Legal		8-23-12
3) Finance		8/23/12
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 12-

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and is hereby authorized, to enter into a development agreement with RBJ Bailey, L.L.C. for Development Agreement for Drainage Improvements along Cecil Ashburn Drive on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that document attached hereto and identified as "Development Agreement between the City of Huntsville, Alabama and RBJ Bailey, L.L.C. for Drainage Improvements along Cecil Ashburn Drive" consisting of a total of six (6) pages and the date of August 23, 2012 appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, and an executed copy of said document being permanently kept on file in the Office of the City Clerk of the City of Huntsville, Alabama.

ADOPTED this the 23rd day of August, 2012.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 23rd day of August, 2012.

Mayor of the City of Huntsville,
Alabama

**Development Agreement between the City of
Huntsville, Alabama, and
RBJ Bailey, LLC**

State of Alabama)
)
County of Madison)

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") made and entered into as of the 23rd day of August, 2012, by and between the **City of Huntsville, a municipal corporation in the State of Alabama**, ("City"), and **RBJ Bailey, LLC, an Alabama limited liability company** ("Developer").

WITNESSETH:

WHEREAS, the City is the owner of certain lands within its corporate limits a tract of land abutting Cecil Ashburn Drive (hereinafter referred to as the "Parcel"), which lands are more particularly described as follows:

Part of Lot 10A A resubdivision of Lot 10 of a resubdivision of Lot 1 Bailey Cove Office Plaza

All that part of Section 21, Township 4 South, Range 1 East, Madison County, Alabama and more particularly described as:

Beginning at a point on the northerly right-of-way margin of Cecil Ashburn Drive and the southerly boundary of Lot 1 of Valley Bend East at Jones Valley Phase 2; thence southwesterly 65.61 feet along the northerly right-of-way line of Cecil Ashburn Drive and along a curve to the left having a radius of 577.46 feet and a chord bearing of S65°46'12"W and a chord distance of 65.58 feet; thence S62°34'53"W along the northerly right-of-way line of Cecil Ashburn Drive a distance of 242.60 feet; thence N27°24'45"W a distance of 97.48 feet to the northerly line of a 50 foot utility and drainage easement; thence northwesterly along the northerly line of said 50 foot utility and drainage easement the following courses; N82°30'53"W a distance of 49.35 feet; thence S80°56'44"W a distance of 54.33 feet, thence N84°54'27"W a distance of 163.52 feet; thence S71°12'13"W a distance of 57.61 feet; thence N82°55'39"W a distance of 57.72 feet; thence N72°26'36"W a distance of 79.95 feet; thence N77°17'32"W a distance of 66.73 feet; thence N74°17'44"W a distance of 57.26 feet; thence N01°09'46"E a distance of 15.00 feet to the southerly boundary of Lot 1 of Valley Bend East at Jones Valley Phase 2; thence S88°50'14"E along the southerly boundary of Lot 1 a distance of 893.63 feet to the point of beginning and containing 54.015 square feet or 1.24 acres, more or less and being a part of Lot 10A of a Resubdivision of Lot 10 of a Resubdivision of Lot 1 of Bailey Cove Office Plaza as recorded in Plat Book 39, Page 47 in the Office of the Judge of the Probate Court of Madison County, Alabama.

; and

WHEREAS, the Parcel is not needed for a municipal purpose or public use and is surplus; and

WHEREAS, the City has agreed to quit claim the Parcel to the Developer in exchange for certain drainage improvements along Cecil Ashburn Drive as well as in the adjacent Drainage Way; these improvements collectively shall be hereinafter referred to as the "Work".

President of the City Council of the City
of Huntsville, AL
Date: August 23, 2012

NOW THEREFORE, FOR AND IN CONSIDERATION of (a) the premises which are deemed a material part of this Agreement and, by this reference, are incorporated herein, (b) the mutual agreements, covenants, provisions, and terms of this Agreement set forth herein, (c) the execution, acknowledgment and delivery of this Agreement by the parties hereto, and (d) other good and valuable consideration, the receipt and sufficiency of all of which is hereby expressly acknowledged by City and Developer, and intending to be legally bound hereby, City and Developer agree and covenant with and unto each other, as follows:

Section 1. City's Obligation. The City shall deliver a quit claim deed conveying the Parcel to the Developer upon the Developer posting the security fund required in section 4 of this Agreement.

Section 2. Developer's Obligations. In exchange for the Parcel, the Developer shall, at the Developer's sole cost, expense, and risk, perform as follows:

(a) Developer shall complete slope stability improvements and other improvements necessary to improve the general drainage capability of the City's drainage channel located adjacent to the Parcel east of Spring Gate Lane and north of Cecil Ashburn Drive. The said improvements shall begin at the eastern edge of the Parcel and continue due west for a distance of at least 900 feet. The plans and specifications for the said improvements are subject to the approval of the City Engineer. All work shall be done in accordance with the City of Huntsville's Storm water Specifications. Developer shall also improve access for the City to the drainage channel. The Work must be completed to the satisfaction of the City Engineer.

(b) *Value of Exchange.* According to engineering estimates, the Parcel has an appraised value of \$12,400.00. The estimated value of the Work is at least \$12,400.00. Notwithstanding anything to the contrary contained in this Agreement and in addition to all other remedies available to the City in law and in equity or under this Agreement, if the Developer fails to satisfactorily complete the Work within the time provided, then the City may, subject to the notification and cure period set forth in subsection 4(c)(1) of this Agreement, draw upon the security fund posted under section 4 of this Agreement (less the value of any satisfactorily completed portion of the Work as such value is as reasonably determined by the City Engineer), and retain the drawn funds and not expend all or any portion of the funds to complete the Work, or may elect to proceed in accordance with subsection 4(c) below.

Section 3. Conditions of Construction.

(a) *Workmanship.* All work performed by or on behalf of the Developer under this Agreement shall be of good quality workmanship, performed by duly licensed and qualified contractors and subcontractors, and in accordance with all applicable federal, state, and local laws, including any required permitting. In addition, all work shall be performed so as to limit, as much as reasonably possible, any interference of the use of Cecil Ashburn Drive by the general public. The Developer shall be responsible for securing the construction site in order to protect persons and property from harm.

(b) *Restoration.* The Developer shall within the time required by the City Engineer and to his satisfaction restore or replace all or any portion of Cecil Ashburn Drive damaged or destroyed by the Developer or those working on their behalf.

(c) *City Inspection.* All work performed by or on behalf of the Developer under this Agreement shall be subject to inspection of the City Engineer or those selected by the City Engineer to perform the inspections. Should the inspections reveal any deficiencies in the work, then the City Engineer will provide the Developer with a list of those deficiencies and a time table for remedying the deficiencies.

(d) *Stop Work Order.* The City Engineer may issue a stop work order in the case of an immediate threat to persons or property as a result of an emergency or as a result of the actions of the Developer or those working on its behalf.

Section 4. Timing of Developer's Performance; Security; City's Remedies for Developer' Breach.

(a) *Timing.* Developer shall complete, to the satisfaction of the City Engineer, construction of the Work within one year from the date of this Agreement. The City Engineer may allow one or more extensions of the time of Developer's performance if the City Engineer, upon the written request of Developer, reasonably determines in his sole discretion that the City will not be unduly prejudiced by the delay and that the delay is due to circumstances beyond the control of the Developer. If the City Engineer grants one or more such extensions, then the security fund required in the following subsection (b) of this section shall be extended accordingly to allow for the one-year warranty period after completion.

(b) *Security Fund.* Within 20 days after the execution of this Agreement, the Developer shall post, in favor of the City, cash or an irrevocable, standby letter of credit suitable in form and content to the City Attorney, or his designee, in the amount \$12,400.00, to secure the Developer's timely and satisfactory performance under this Agreement, including the completion of the Work, and as a one-year warranty against defects in the completed Work including failure of the Landscaping Improvements. Upon the City Engineer's finding that the Work has been satisfactorily completed and that there are no outstanding obligations of the Developer under this Agreement, he may release that portion of the security fund that he does not require as security under the one-year warranty period.

(c) *Draws of Security Fund.*

(1) Subject to subsection 2(b) of this Agreement, in the event the Developer fails to timely and satisfactorily complete the Work, or to otherwise perform as required under this Agreement, the City may, in addition to all other remedies available to the City in law and in equity or under this Agreement, draw upon, at any time and from time to time, the security fund in an amount that the City Engineer estimates is necessary under the circumstances for the City to perform or have performed the work or to reimburse the City if it has performed the work or had the work performed on its behalf.

(2) The City Engineer shall provide the Developer with 30 days advance written notice of his intention to draw upon the security fund and the reason for the draw and the Developer shall have that period of time as a cure period. The City Engineer may require replenishment of the security fund at any time and from time to time up until its expiration.

Section 5. Access. The City and those working on its behalf are hereby granted temporary access to the Parcel in the event the City elects to cure in accordance with this Agreement.

Section 6. Indemnification and insurance.

(a) *Indemnification.* Developer shall and does hereby agree to indemnify, defend, and hold harmless the City, its present and future elected and appointed officials, officers, employees, agents, contractors, and subcontractors from and against any and all claims including bodily injury or property damage, actions, judgments, damages of any kind or nature, fines, costs, expenses, liabilities, interest, or losses (including reasonable attorneys' fees and expenses and court costs and fees, through appeal), arising out of or in any way relating to, directly or indirectly, the construction of the Work, Developer's performance or failure to perform under this Agreement, or other matters contemplated in this Agreement for which Developer is liable, including the intentional, wanton, reckless, or negligent acts or failures to act, sole or concurrent, of the Developer, and its employees, agents, contractors, subcontractors, or volunteers,. This subsection (a) shall survive the expiration, revocation, or termination of this License. Nothing contained in this subsection (a) shall be construed as a waiver of any immunity or statutory protection or cap provided in favor of the City and no third party may expand any recovery against the City due to Developer's duty of indemnification.

(b) *Insurance.*

(1) *Commercial General Liability.* Developer shall, at its sole expense, maintain, throughout the period of the Work and 30 days after the Work has been completed and approved by the City Engineer (hereinafter referred to as "coverage period") Commercial General Liability Insurance using carriers licensed in the State of Alabama and maintaining a Best rating of not less than "A." Such insurance shall include coverage for premises and operations, underground, collapse and explosion, and products and completed operations, independent contractors, contractual, personal and advertising injury, and broad form property damage and shall name as Additional Insureds the City, its present and future elected and appointed officials, officers, employees, agents, contractors, and subcontractors. Such insurance shall be in the amount of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate covering bodily injury, including death, and property damage. If Developer employs independent contractors, Developer shall insure that these contractors maintain the same levels of insurance and that the City is named as an additional insured under each policy with the same limits and policy language required of the Developer pursuant to this Agreement. Insurance will be written on an occurrence basis.

(2) *Business Automobile Liability.* Developer shall, at its sole expense, maintain during the coverage period Business Automobile Liability insurance with a limit of One Million Dollars (\$1,000,000) combined single limit for bodily injury, including death, and property damage covering owned, leased, non-owned, and hired automobiles used in conjunction with its operation under this Agreement. Coverage for loading and unloading shall be provided under either automobile liability or general liability policy forms. Such insurance shall name the City, its present and future elected and appointed officials, officers, employees, agents, contractors, and subcontractors as Additional Insureds.

(3) *Workers' Compensation and Employer's Liability.* Developer shall, at its sole expense, maintain, during the coverage period, Workers' Compensation coverage as prescribed by the laws of the State of Alabama and Employer's Liability coverage in an amount of not less than One Million Dollars (\$1,000,000).

(4) *Umbrella or Excess Liability.* Developer shall, at its sole expense, maintain during the coverage period Umbrella or Excess Liability insurance in the amount of Two Million Dollars (\$2,000,000). Such insurance shall name the City, its present and future elected and appointed officials, officers, employees, agents, contractors, and subcontractors as Additional Insureds.

(5) *Evidence of Insurance; deductibles; approval; reservation.* Prior to commencing construction of the Work and upon each policy renewal, Developer shall, at no cost to the City, furnish to the City Engineer Certificates of Insurance evidencing all of the aforementioned types and limits of insurance to be in effect. The City reserves the right to require complete, certified copies of all required insurance policies at any time and from time to time, at no cost to the City. Developer has the right to maintain reasonable deductibles and the City reserves the right to review and approve such deductibles, which approval shall not be unreasonably withheld or delayed.

(6) *Maintenance of Insurance Policies; Developer' Coverage Primary.* The liability insurance policies required under this section, if any, shall be maintained by Developer through the coverage period. Each such policy of insurance shall provide that it not be cancelled, not renewed, nor materially changed without sixty (60) days' written notice to the City. An endorsement shall be provided which states that Developer's coverage is primary and any other insurance carried by the City, if applicable to a loss, is excess.

(7) *No Limit of Liability.* The legal liability of Developer to the City and any person for any of the matters that are the subject of the insurance policy(ies) required by this section, shall not be limited by

said insurance policy(ies) or by the recovery of any amounts thereunder.

(8) *Certificate of Insurance.* Certificates of Insurance shall name the City, its present and future elected and appointed officials, officers, employees, agents, contractors, and subcontractors as Additional Insureds, in the case of Commercial General Liability, Business Automobile Liability, and Umbrella or Excess Liability insurance. Additional insured status shall be through ISO Additional Endorsement CG 20 10 11/85 or equivalent that is sufficient to provide coverage as per this Agreement. Worker's Compensation and Employer's Liability insurance shall waive rights of subrogation in favor of the City. Each policy shall contain a provision that coverage afforded under the policies will not be cancelled, changed or not renewed unless at least sixty (60) days prior written notice has been given to the City. All subsequent notices or certificates shall be delivered to the City Engineer at 320 Fountain Circle, Huntsville, Alabama 35801. All deductibles under said policy shall be the sole responsibility of Developer.

(c) *Indemnification not limited.* The indemnification obligations of this Agreement are not limited in any way by limitation of the amount or type of damages or compensation payable by or for Developer under worker's compensation, disability or other employee benefits acts, or the acceptance of insurance certificates required by this Agreement, or the terms, applicability, or limitations of any insurance held by Developer.

(d) *No waiver of City rights.* The City does not and shall not waive any rights against Developer which it may have by reason of Developer's indemnification, or because of the acceptance by the City of Developer's proof of insurance or deposit with the City of any insurance policies described in this Agreement.

Section 7. Miscellaneous.

(a) Failure of the City to insist on strict performance of any of the conditions, covenants, terms, or provisions of this Agreement or to exercise any of its rights hereunder shall not waive such rights, but the City shall have the right to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity.

(b) This Agreement shall be binding upon and inure to the benefit of the parties, their respective heirs, personal representatives, successors and assigns.

(c) Any and all disputes arising out of this Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Alabama. All actions related to the validity, construction, interpretation, and enforcement of this Agreement shall be instituted and litigated in the courts of Alabama. Developer submits to the jurisdiction of the courts of Alabama located in Madison County, Alabama.

(d) This Agreement contains the sole and entire agreement of the parties with respect to matters contemplated hereunder, and no representations, inducement, promise, or agreement, oral or written, between Developer and the City and not incorporated herein shall be of any force or effect. Any amendment to this Agreement shall be in writing and executed by Developer and the City.

(e) If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement.

(f) The captions of this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the intent or scope of this Agreement.

(g) All notices or demands pursuant to this Agreement shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested to the following addresses:

If to the City, to:

Director of Urban Development
City of Huntsville
320 Fountain Circle
Huntsville, AL 35801

If to the Developer, to:


RBJ Bailey, LLC
401 Franklin St SE
Huntsville, Alabama 35801-4210

All notices or demands shall be deemed effective, if personally delivered, upon delivery, and if mailed, by first class or certified mail, three (3) days after mailing. Nothing herein shall prevent the parties from effecting personal delivery via e-mail.

(h) For purposes of E-Verify compliance, the Developer hereby certifies that, at the time of the execution of this Agreement, it does not have any employees.

IN WITNESS WHEREOF the parties have entered into this Agreement as of the date first above written.

RBJ Bailey, LLC


By: Raymond Jones, Jr.
As Its: Owner

The City of Huntsville, a municipal corporation in the State of Alabama

By: _____
Tommy Battle, Mayor

ATTEST:

Charles E. Hagood
City Clerk-Treasurer